

HON. FRANK L. KURTZ

William J. Monnette, WSBA #8511
MONNETTE & CAWLEY, PS
630 North Chelan Ave., Ste. A-2
PO Box 2599
Wenatchee, WA 98807-2599
Telephone: (509) 662-7193
Facsimile: (509) 663-9163
Attorneys for Plaintiffs

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

In Re: TAMI R. DEMERS and
JAMES M. DEMERS, husband and
wife,
Debtors.

NO. 08-00616-FLK7

ADV. PRO. NO: 08-80060-FLK

ROGER G. SPECK and PAMELA J.
SPECK, husband and wife,
Plaintiffs,
v.

FINDINGS OF FACT AND
CONCLUSIONS OF LAW IN
SUPPORT OF ORDER
GRANTING PERMISSIVE
ABSTENTION

TAMI R. DEMERS and JIM
DEMERS, wife and husband, and
CLEARWATER STEAKHOUSE,
INC.,
Defendant.

FINDINGS OF FACT

1. The above-captioned adversary proceeding was commenced on May 27, 2008.

FINDINGS OF FACT AND CONCLUSIONS
OF LAW IN SUPPORT OF ORDER
GRANTING PERMISSIVE ABSTENTION
Page 1

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MONNETTE & CAWLEY, P.S.
509/662-7193
FAX 509/663-9163
POST OFFICE BOX 2599
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1 2. The Plaintiffs claim that Defendants violated the Washington State
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3 Securities Act and Federal securities laws when they sold unregistered securities
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5 to Plaintiffs and made material misrepresentations with respect thereto, resulting in
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7 liability for the consideration paid, interest and attorney's fees, which is non-
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9 dischargeable under 11 USC 523(a)(19).
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13 3. The Plaintiffs state that another claim under the Washington State
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15 Securities Act and Federal securities laws is currently being litigated, but without
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17 specific reference to 11 USC 523(a)(19), in an ongoing Washington State court
18
19 proceeding which was originally filed December 24, 2007 in the Superior Court of
20
21 Douglas County, and that the complaint therein can and will be amended to add
22
23 new Securities Act claims non-dischargeable under 11 USC 523(a)(19).
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27 4. The Hon. Judge Kurtz heard oral argument on Plaintiffs' motion for
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29 Summary Judgment on Defendants' liability on the State and Federal Securities
30
31 Fraud claims and the specific claim of non-dischargeability under 11 USC
32
33 523(a)(19). At hearing on August 27, 2009 Judge Kurtz entered an order denying
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35 summary judgment and declined to rule on Defendants' liability, reasoning that
36
37 the court did not have jurisdiction to decide liability on the securities claims and
38
39 then grant an exception from discharge under 11 USC 523(a)(19), based on In re;
40
41 Jafari, 401 B.R. 494 (Bankr. D. Colo. 2009).
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46 FINDINGS OF FACT AND CONCLUSIONS
47 OF LAW IN SUPPORT OF ORDER
48 GRANTING PERMISSIVE ABSTENTION
49 Page 2
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51
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CONCLUSIONS OF LAW

1. Under 28 U.S.C. § 1334(c)(1), the District Court has the authority to abstain from hearing a proceeding arising under, arising in, or related to a case under 11 U.S.C. § 101, et seq. when the interest of justice, the interest of comity with State courts, or respect for State law so dictates.

2. Under FRBP 5011, the Bankruptcy Judge is to hear a motion brought under 28 U.S.C. § 1334(c)(1).

3. The issues raised by the Plaintiffs' complaint include a claim for money judgment arising from violation of the Washington State Securities Act and Federal securities laws which, if granted, would appear to be non-dischargeable under 11 USC 523(a)(19).

4. This adversary proceeding is a core proceeding and arises in the bankruptcy case filed by the Defendant.

5. The claim for money judgment under the Washington State Securities Act is governed solely by state law, and presents novel questions of state law.

6. A Washington state court would have jurisdiction over the subject matter and parties in this action.

FINDINGS OF FACT AND CONCLUSIONS
OF LAW IN SUPPORT OF ORDER
GRANTING PERMISSIVE ABSTENTION
Page 3

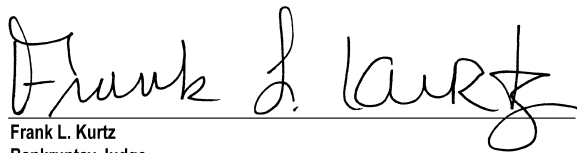
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509/662-7193
FAX 509/663-9163
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3 7. There are other claims pending in this adversary proceeding for money
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5 judgment and determination of non-dischargeability under 11 USC 523(a)(2), over
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7 which the bankruptcy court appears to have exclusive jurisdiction. Accordingly,
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9 further proceedings in this adversary proceeding should be stayed pending further
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11 order of this court while the claim purportedly non-dischargeable under 11 USC
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13 523(a)(19) is litigated in state court.
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17 Based on the foregoing, the Plaintiffs' Motion for an order of partial
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19 abstention under 28 U.S.C. § 1334(c)(1), as to the claim for money judgment
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21 arising from violations of the Washington State Securities Act and Federal
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23 securities laws and whether that claim is non-dischargeable under 11 USC
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25 523(a)(19), is granted.
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35 Presented by

36
37 /S/ WILLIAM J. MONNETTE
38 Monnette & Cawley, P.S.
39 P.O. Box 2599
40 Wenatchee, WA 98807-2599
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Frank L. Kurtz
Bankruptcy Judge

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46 FINDINGS OF FACT AND CONCLUSIONS
47 OF LAW IN SUPPORT OF ORDER
48 GRANTING PERMISSIVE ABSTENTION
49 Page 4

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509/662-7193
FAX 509/663-9163
POST OFFICE BOX 2599
WENATCHEE, WASHINGTON 98807-2599